

# **EXHIBIT D**

## REPORTER'S RECORD

## VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 2017-CI-23341  
 CHRIS WARD, ET AL, ) IN THE DISTRICT COURT OF  
     *Plaintiffs,* )  
 V. ) BEXAR COUNTY, TEXAS  
 ACADEMY, LTD. D/B/A ACADEMY )  
 SPORTS + OUTDOORS, )  
     *Defendant.* ) 224TH JUDICIAL DISTRICT

TRIAL COURT CAUSE NO. 2018-CI-14368  
 ROSANNE SOLIS, ET AL, ) IN THE DISTRICT COURT OF  
     *Plaintiffs,* )  
 V. ) BEXAR COUNTY, TEXAS  
 ACADEMY, LTD. D/B/A ACADEMY )  
 SPORTS + OUTDOORS, )  
     *Defendant.* ) 438TH JUDICIAL DISTRICT

TRIAL COURT CAUSE NO. 2018-CI-23302  
 ROBERT BRADEN, ) IN THE DISTRICT COURT OF  
     *Plaintiff,* )  
 V. ) BEXAR COUNTY, TEXAS  
 ACADEMY, LTD. D/B/A ACADEMY )  
 SPORTS + OUTDOORS, )  
     *Defendant.* ) 408TH JUDICIAL DISTRICT

TRIAL COURT CAUSE NO. 2018-CI-23299  
 CHANCIE MCMAHAN, ET AL, ) IN THE DISTRICT COURT OF  
     *Plaintiffs,* )  
 V. ) BEXAR COUNTY, TEXAS  
 ACADEMY, LTD. D/B/A ACADEMY )  
 SPORTS + OUTDOORS, )  
     *Defendant.* ) 285TH JUDICIAL DISTRICT

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**DEFENDANT'S MOTION TO QUASH DEPOSITIONS AND TO ENFORCE  
 AGREED PROTECTIVE ORDER AND CONFIDENTIALITY AGREEMENT  
 MARCH 8, 2019**  
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On the 8th day of March, 2019, the  
 following proceedings came on to be heard in the  
 above-entitled and numbered cause before the HONORABLE  
 NORMA GONZALES, Judge Presiding, held in the 131st  
 District Court, San Antonio, Bexar County, Texas:  
 Proceedings reported by machine shorthand.

MARY ORALIA BERRY, CSR, RDR, CRR OFFICIAL COURT REPORTER  
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P R O C E E D I N G S

MARCH 8, 2019

FRIDAY

*(9:02 a.m. Before the Court.)*

*THE COURT:* The Court calls 2018-CI-14368, Rosanne Solis, Et Al v. Academy, Ltd. Announcements for the record, please.

*MR. CRAWFORD:* Yes, Your Honor, Marco Crawford. I represent Chancie McMahan, Roy White, and Scott Holcombe.

*MR. DEMERATH:* Justin Demerath, Your Honor. I represent plaintiff Robert Braden.

*MR. BENTLEY:* And Dennis Bentley, Your Honor. I'm also with Marco for Chancie McMahan, Scott Holcombe, and Roy White.

*THE COURT:* How do you spell your last name?

*MR. BENTLEY:* B-E-N-T-L-E-Y.

*THE COURT:* All right. Mr. Prichard?

*MR. PRICHARD:* Good morning, Your Honor. David Prichard for Academy Sports + Outdoors. I've got my two colleagues, Janet Militello and Nick Demeropolis.

*THE COURT:* Got it.

It started, and then it stopped.

*(Discussion off the record.)*

1                   *THE COURT:* All right. What do we have?  
2 whose motion is it?

3                   *MR. PRICHARD:* It's our -- it's our motion  
4 to quash two depositions. As the Court may can tell  
5 from the pleadings, this is a lawsuit that several  
6 plaintiffs have filed against Academy Sports + Outdoors  
7 as a result of the Sutherland Springs tragedy.

8                   In this matter, the plaintiffs seek now to  
9 re-depose two witnesses. We call them -- because of a  
10 protective order, we call them Deponent A and  
11 Deponent B. One of them is the manager of the Academy  
12 store where the firearm in question was purchased.  
13 Deponent B is the director of compliance for Academy  
14 Sports + Outdoors. And back in November of this year  
15 with the agreement of counsel, these two individuals  
16 were produced for depositions.

17                   The director of compliance, his deposition  
18 lasted almost five hours. Everybody had an opportunity  
19 to ask all of the questions that they were interested in  
20 asking. It was supposed to be limited to a certain --  
21 certain areas, but Ms. Militello, being gracious,  
22 allowed them to ask any of the questions that they  
23 wanted to ask of this gentleman for five hours and  
24 several hundred pages. The store manager lasted over an  
25 hour, over 103 pages, the same thing. And questions

1 were asked, no scope limitation, no instructions not to  
2 answer the questions. Those were conducted in November,  
3 and now they seek to re-depose them.

4 And so, you know, I think Ms. Militello  
5 made it very clear on the record: "We're going to do  
6 this one time, one time." And now they come back, and  
7 they're asking to re-depose these people, these two  
8 gentlemen. We object. We don't think that's fair. We  
9 don't think that's right.

10 We don't have any pleadings from them on  
11 this motion. They haven't -- they haven't really  
12 expressed to us what the purpose is, and I think the  
13 purpose has to be good cause, Your Honor. They have to  
14 show exactly why they need these depositions.

15 And I will just, as an advisory, let the  
16 Court know that there has been yet another lawsuit  
17 filed. It's not with this case, so there are other  
18 matters that are out there. It may be at some point in  
19 time we're back here having to discuss more depositions  
20 of these same individuals.

21 *THE COURT:* So other plaintiffs out of the  
22 same incident?

23 *MR. PRICHARD:* Correct, Your Honor.  
24 Correct. So for them to get a second bite at the apple,  
25 that's just -- that's just wrong. It's invasive. They

1 had their opportunity. They were told they had their  
2 opportunity, and we respectfully ask that the Court  
3 quash these depositions. They've had their chance.

4 In fact, I will tell you that  
5 Ms. Militello said, "Look, guys, I think this is a  
6 little premature. Why don't we get some of the written  
7 discovery?"

8 They were insistent. "No. We want to go  
9 forward."

10 "Okay. We'll go forward, but I don't  
11 think this is the right time."

12 "Oh, yeah, we want to go forward."

13 We understand that. They have that right.  
14 She made it happen. They took the deposition, and now  
15 here we are. We want a second bite at the apple.

16 This case is going to be tough enough when  
17 it's time to move on to other issues, and we  
18 respectfully ask that the Court quash these depositions.

19 *THE COURT:* All right. Response?

20 *MR. CRAWFORD:* Yes, Your Honor. Just to  
21 clarify a few things, there are multiple lawsuits that  
22 have been filed against Academy. That's no dispute  
23 there.

24 I want to clarify that a prior Judge in  
25 Bexar County has consolidated discovery for all of those



1 plaintiffs; different trial dates, but consolidated  
2 discovery. I also want to clarify and maybe inform the  
3 Court --

4 *THE COURT:* Consolidated discovery, does  
5 that include depositions, or is that just written  
6 discovery?

7 *MR. CRAWFORD:* It's both.

8 *THE COURT:* Okay.

9 *MR. CRAWFORD:* And just to plug in some  
10 gaps here, lawsuits were filed against Academy. And  
11 immediately a motion for summary judgment was filed by  
12 Academy, and that motion for summary judgment was filed  
13 on the basis that there's a federal statute that  
14 prevents this type of lawsuit from taking place.

15 A hearing was heard to continue that  
16 hearing -- that motion for summary judgment, and that  
17 hearing was heard on October 22nd, 2018. If you look at  
18 Tab 4 of that really, really big binder, which is to  
19 your left right there, that is the reporter's record for  
20 the October 22nd, 2018 hearing in front of Judge  
21 Arteaga. And I don't want to go through the entire  
22 thing, but what was discussed was whether or not we can  
23 get a continuance of that motion for summary judgment  
24 hearing because we had zero depositions, very limited  
25 discovery at that point.

1           And I would refer the Court to page 58 of  
2 that transcript, and I've actually highlighted the  
3 section that I think is actually the Court's ruling, and  
4 the Court allowed four depositions that Academy fought  
5 by the way. They didn't graciously voluntarily provide  
6 these depositions. They fought. The Judge allowed them.

7           And if you would look at the last sentence  
8 on line 25, it says -- the Court says: "We're going to  
9 limit" -- she asked us to "write it down" -- the  
10 depositions to "the sales of Ruger AR-556 and its  
11 magazines to out-of-state residents," because that was  
12 the issue that the motion for summary judgment was based  
13 on filed by the defendant.

14           So those four depositions were taken.  
15 Counsel is correct, those four depositions were long,  
16 but those four depositions were also limited to the  
17 sales of Ruger AR-556, its magazines -- and its  
18 magazines to out-of-state residents.

19           And I want to refer, in the -- in the very  
20 front pocket, Your Honor, is my petition. And without  
21 getting into too much detail, we've sued Academy for  
22 negligence. We've sued them for gross negligence. And  
23 part of our negligence claims is hiring, negligent  
24 training, negligent supervision, and other things.

25           So under Tab 5 is the deposition of

1 Deponent A, and he is the compliance manager. I've  
2 actually tabbed the index at the back, and I think  
3 that's important because the word "training" came up in  
4 that several-hundred-page deposition nine times.

5 And if you refer to the questions that  
6 "training" is mentioned, there's no question asked by  
7 the plaintiffs of what type of training he received?  
8 who conducted the training? How long did the training  
9 last? what materials were used? when, where, and how  
10 often is training? Those questions weren't asked. They  
11 weren't asked because we were following the Court's  
12 instruction in October of 2018 to limit the deposition.

13 *THE COURT:* Was that -- was that for the  
14 purpose of the summary judgment?

15 *MR. CRAWFORD:* Yes. So those depositions  
16 were for the purpose of the summary judgment. That  
17 hearing transcript makes that crystal clear.

18 Did we ask some questions to lay the  
19 foundation that may have been outside the scope? Maybe.  
20 But we didn't get into training, negligent training. We  
21 didn't get into gross negligence. We didn't get into  
22 all of the other causes of action that we've pled,  
23 including negligent supervision, failing to discipline  
24 or reprimand employees, really detailed background check  
25 questions. We didn't get into that other than the

1 background check of that shooter.

2 So counsel is correct; depositions were  
3 taken, but those depositions were limited. I don't care  
4 how long -- how many pages those depositions were.

5 Those questions were limited. If you look up the word  
6 "training" in Deponent B's deposition, five times.  
7 That's how many times the word "training" came up. And  
8 that's one example, all of our other causes of action.

9 We have more discovery that's been sent  
10 out, a ton of discovery. We didn't get to ask any  
11 questions about how these folks handled or have handled  
12 other out-of-sale -- out-of-state sales regarding Rugers  
13 and rifles.

14 *THE COURT:* What's the status of the  
15 written discovery?

16 *MR. CRAWFORD:* Well, we're going to try  
17 and confer with counsel. It looks like almost  
18 everything has been objected to. They did provide maybe  
19 2500 pages or so of certain policies dealing with this  
20 stuff, but there's so much that we've requested that's  
21 been objected to. We'll have to confer and try and work  
22 that out.

23 *THE COURT:* And when do you have these  
24 current depositions scheduled?

25 *MR. CRAWFORD:* Well, I actually just -- I

1 sent an e-mail. And three days later, I didn't get a  
2 response asking for depos. I set them for late March.  
3 I'm open to resetting those.

4 *THE COURT:* Okay. I'm just trying to  
5 figure out the scheduling --

6 *MR. CRAWFORD:* Sure.

7 *THE COURT:* -- between discovery, written  
8 and --

9 *MR. CRAWFORD:* Of course.

10 *THE COURT:* Okay.

11 *MR. CRAWFORD:* And, yeah. Discovery has  
12 been responded to. The most recent set was objected to,  
13 just about every question. So, hopefully, we'll work  
14 something out there.

15 But, Your Honor, we understand. And I  
16 understand Mr. Prichard, where he's coming from. I get  
17 it. Depositions have been taken, but they were limited.  
18 And they're there. I don't know if you want to read  
19 300 pages, but 98 percent of it deals with out-of-state  
20 sales and the AR-556.

21 Thank you, Your Honor.

22 *THE COURT:* All right. Anybody else --  
23 no? -- on this issue?

24 *MR. DEMERATH:* No, Your Honor. Thank you.

25 *MR. PRICHARD:* I'm sorry.

1                   *THE COURT:* Okay. Mr. Prichard, a brief  
2 response?

3                   *MR. PRICHARD:* Just briefly. I appreciate  
4 the argument, but that's not exactly correct. Let me  
5 just give you a flavor. Now, talking about the firearm  
6 in question and training, they admitted that they asked  
7 about training.

8                   On page 13: "Do you have the" --

9                   "Question: Do you have the qualifications  
10 to sell a firearm at Academy?

11                   "Yes.

12                   "Question: Do you have the training to  
13 sell a firearm at Academy?

14                   "Answer: Yes.

15                   "Would you have the qualifications to sell  
16 to him?

17                   "Yes.

18                   "If he walked in and said, 'Here's my  
19 Colorado driver's license. I want to buy a Ruger  
20 Model 17,' what would you do?"

21                   All -- you know, it's replete throughout.

22                   *THE COURT:* What page is that?

23                   *MR. PRICHARD:* That page, that's on  
24 page 13. And that's Deponent A, Your Honor, and he was  
25 the store director.

1                   *THE COURT:* Is Deponent A under Sub 5?

2                   *MR. CRAWFORD:* Deponent A is Number 6,

3 Your Honor.

4                   *THE COURT:* Number 6, okay.

5                   *MR. CRAWFORD:* I believe counsel  
6 referenced page 13 of that deponent's deposition.

7                   *MR. PRICHARD:* Page 13.

8                   *THE COURT:* Okay. I see it.

9                   *MR. PRICHARD:* And it goes on for several  
10 pages in that respect, the procedures.

11                   *THE COURT:* Do you agree with opposing  
12 counsel that Judge Arteaga -- and it appears so from the  
13 transcript -- but that it was limited to sales to  
14 out-of-state residents regarding the Ruger AR-556?

15                   *MR. PRICHARD:* I'm sorry, Your Honor. I  
16 didn't get the first part.

17                   *THE COURT:* Do you agree that Judge  
18 Arteaga limited the depositions to out-of-state sales --  
19 or sales to out-of-state residents, and, in particular,  
20 the Ruger AR-556?

21                   *MR. PRICHARD:* I think that's in the  
22 order. I don't think that's what effectively happened  
23 at the depositions. I think those depositions -- and,  
24 again, I would just repeat that Ms. -- that Janet here  
25 allowed free rein. I mean, she could have stepped in.

1 "No. I'm sorry. That's way outside the scope," and she  
2 didn't. And the one deposition went on for over five  
3 hours, so it's a lot more than just this firearm.

4 And even -- she even made the comment, you  
5 know, "I'm not going to instruct them not to answer. Go  
6 ahead," for this very reason, Your Honor. Trying to  
7 minimize, minimize these people's involvement and taking  
8 them away and having countless depositions because  
9 there's a new lawsuit, new plaintiffs' lawyers coming,  
10 and they're going to have to do it again.

11 *THE COURT:* Well, and that's why I was  
12 asking earlier. I mean, if it's been consolidated, both  
13 the written and the deposition discovery, are all the  
14 other plaintiffs' lawyers prepared to proceed at these  
15 depositions that you're --

16 *MR. PRICHARD:* No. Let me -- let me be  
17 clear.

18 *THE COURT:* Okay.

19 *MR. PRICHARD:* This is only for these four  
20 lawsuits. There are more. There's others that are not  
21 consolidated yet.

22 *THE COURT:* Oh.

23 *MR. PRICHARD:* That was unclear.

24 *MR. CRAWFORD:* It is. And what happened  
25 was we're the four or five law firms currently here, and



1 I'm speaking for all of them, and I have their  
2 permission. Fifty-two or so were filed maybe last week  
3 or something, so I haven't -- they haven't been brought  
4 into the consolidation.

5 *MR. PRICHARD:* That's correct.

6 *MR. CRAWFORD:* But prior to that, it had  
7 been consolidated. And I just would clarify I would  
8 read a couple of pages before and a couple of pages  
9 after page 13. There's more detail.

10 *THE COURT:* Well, here's my concern. My  
11 concern is not so much necessarily allowing you to take  
12 these depositions. But if there's going to be more and  
13 they're going to be consolidated, why can't we work out  
14 some structure so that they're all consolidated, and,  
15 you know, so it's not happening over and over and over  
16 again on the other lawsuits that are going to come up?

17 who consolidated these? Was it by  
18 agreement or --

19 *MR. PRICHARD:* Judge Canales.

20 *THE COURT:* Okay.

21 *MR. CRAWFORD:* Judge David Canales.

22 *THE COURT:* And, I mean, it sounds -- it  
23 makes sense certainly on discovery. Whether or not they  
24 get tried together will be, I guess, a decision for a  
25 Judge somewhere down the road.

1 But, yes, ma'am?

2 MS. MILITELLO: And if I -- if I can  
3 address that. It kind of touches on the second motion,  
4 which is the motion to enforce the protective order.  
5 But I have been told that one of the plaintiffs' counsel  
6 in this latest lawsuit will not agree to a protective  
7 order to protect Academy's confidential documents, which  
8 suggests to me -- although we haven't even answered that  
9 lawsuit yet, it suggests to me that there may be no  
10 agreement to consolidate or to do what has been done in  
11 these first four cases.

12 THE COURT: It may be -- it may be  
13 something that one of our Judges here in Bexar County  
14 does, you know.

15 MS. MILITELLO: Right.

16 MR. CRAWFORD: Yeah. No. I -- Your Honor  
17 that's -- I mean, that's been the consensus.

18 THE COURT: I mean, you're stating  
19 October. That seems hopeful.

20 MR. CRAWFORD: Well, two -- I think one or  
21 two of them are set in October and then one or two of  
22 them in January.

23 THE COURT: Yeah.

24 MR. CRAWFORD: So they're going to be set  
25 trial-wise at different times.

1                   *THE COURT:* Like I said, it's already  
2 March. It just seems like a hopeful setting, you know.

3                   *MR. PRICHARD:* You are correct, Your  
4 Honor.

5                   *MR. CRAWFORD:* But, you know, in all  
6 fairness, we have expert deadlines coming up, and that's  
7 why we need these depositions, and that's why we're  
8 pushing for these depositions because we do have expert  
9 deadlines in April, so I would like these depositions.

10                   And, again, we're not going to rehash the  
11 PLCCA stuff. We've done that already. We overcame the  
12 summary judgment. But we do have a right to prove our  
13 causes of action, which go beyond training. I used that  
14 as an example.

15                   *THE COURT:* These newest filings that  
16 y'all had -- and I'm not trying to go out of what your  
17 motions are here, but I'm just trying to think ahead for  
18 y'all and for all the litigants and for the courts.

19                   This last round, I presume that may not be  
20 the last of them?

21                   *MR. PRICHARD:* The last of?

22                   *THE COURT:* Of the lawsuits.

23                   *MR. PRICHARD:* The lawsuits? Who knows?

24                   *THE COURT:* Yeah.

25                   *MR. PRICHARD:* We don't know.

1                   *THE COURT:* When is the statute of  
2 limitations?

3                   *MR. CRAWFORD:* November -- well, November.

4                   *MR. PRICHARD:* '19. The fall of '19. I  
5 think it was in November '17.

6                   *THE COURT:* Okay. So the fall of this  
7 year?

8                   *MR. PRICHARD:* Yes, Your Honor. That's  
9 another reason, Your Honor.

10                  *THE COURT:* Well, but if they're -- but if  
11 they're facing a deadline of designating experts in the  
12 next couple of months, you know, that's the problem with  
13 so many different lawsuits about the same incident.

14                  *MR. PRICHARD:* Well, that's -- I think  
15 that's exactly why we said it's premature, you know.

16                  *THE COURT:* But they've got deadlines  
17 for --

18                  *MR. PRICHARD:* Well, I know. But they had  
19 the opportunity, and none of that was involved in the  
20 summary judgment. This was -- this was whether or not  
21 federal law applied.

22                  *THE COURT:* Right.

23                  *MR. PRICHARD:* And this -- these  
24 depositions were never even referenced at that summary  
25 judgment hearing at all.

1                   *MS. MILITELLO:* And, Your Honor, the  
2 topics were broad, far broader than the federal statute  
3 that has been referenced here this morning. It was far  
4 broader than that, and there was an absolute discussion  
5 on the record. When I objected, "It's beyond the scope  
6 and don't answer."

7                   The other lawyer, one of the -- he's not  
8 here today, but Mr. Webster asked the questions and  
9 said, "Are you going to bring him back again to answer  
10 these questions?"

11                  And I said, "No. We're doing this one  
12 time only." And I let the witness answer that question  
13 and every other question.

14                  And we had a roomful of lawyers for the  
15 plaintiffs, and they all asked the questions that they  
16 wanted to ask, and they went far beyond this PLCCA  
17 statute, this immunity statute. And they were asking  
18 about ATF terminology and the federal firearms  
19 regulations and references. They asked about the  
20 training and the policies. They asked about Academy's  
21 prohibitions on the sale of long guns and MSRs to  
22 residents of Alaska. I mean, we were all over the place  
23 on these depositions.

24                  And the reason that we had said it is  
25 premature and when we filed the motion for summary

1 judgment, we said, "This is a purely legal issue. It's  
2 just a -- you know, it's a question of law. We don't  
3 need the depositions yet." They insisted.

4 And when the Judge ordered it narrowly --  
5 you know, somewhat narrowly because the whole issue in  
6 that lawsuit is: Is the sale of an AR Model 556 to an  
7 out-of-state resident, who presented a Colorado driver's  
8 license, is that permissible? But she allowed the  
9 depositions -- the deposition questioning to go to any  
10 sale of that gun that is at issue in these lawsuits.

11 But it went far beyond, and it was by  
12 agreement because I said, "We will not bring them back  
13 twice" because, you know, obviously, for all the reasons  
14 that the Court would understand. But you don't depose  
15 people twice. They insisted to go forward there. They  
16 insisted they wanted to ask all of these questions, and  
17 a roomful of people did ask the questions.

18 They're just coming back for a second bite  
19 at the apple. They determined their trial strategy.  
20 They determined when they wanted to ask the questions  
21 and what questions they wanted to ask. And, basically,  
22 they're just asking this Court's indulgence that "Now  
23 that we've thought some more about it, we have some  
24 additional questions." Well, if that were the case,  
25 everybody in every lawsuit could say, "I would like

1 another -- I would like to ask a few more questions I  
2 didn't think of the first time."

3 And when you stop to think about  
4 Deponent B, almost all the time is used up. I mean, it  
5 was five hours or so. And so, what, they want to come  
6 back and now ask another round of questions?

7 *THE COURT:* Well, that's why I was looking  
8 for your motion. You just have regular depo notices out  
9 there or --

10 *MR. CRAWFORD:* They were depo notices,  
11 Your Honor.

12 *THE COURT:* Okay. No motion? Because I  
13 noticed that you said, I think it was -- I guess it was  
14 the -- was it the director of compliance that took five  
15 hours?

16 *MS. MILITELLO:* Yes.

17 *MR. CRAWFORD:* I don't know that he took  
18 five hours. I would have to look at the file.

19 *MS. MILITELLO:* It was right about five  
20 hours.

21 *MR. CRAWFORD:* But, Your Honor, just to  
22 clarify -- I just want to clarify because I really need  
23 to clarify two things.

24 *THE COURT:* Sure.

25 *MR. CRAWFORD:* Mr. Prichard, with all due

1 respect to him, was not at the hearing, and we did  
2 play -- play video testimony. So it was very important,  
3 and the depo testimony was important, and the Judge  
4 agreed to really help us overcome or to try to overcome  
5 that PLCCA statute.

6 The ATF regulations, the federal  
7 regulation terminology are all part of PLCCA. It's not  
8 just here's a handful of questions on out-of-state  
9 sales, okay? And the termination -- the term and  
10 definition of a firearm is all part of PLCCA. It was  
11 all relevant, and we discussed that in the deposition.

12 I'm talking about our negligence claims  
13 and our gross negligence claim, and the supervision that  
14 may or may not have been there, the training, etc. I  
15 need -- I need -- none of that was discussed. Nine  
16 references to training.

17 He, Mr. Prichard, picked out probably the  
18 most in-depth questioning on training. That's probably  
19 it, if you look at those sections, and you can look at  
20 them yourself without taking my word for it. But they  
21 may have been long depositions, but they were solely  
22 geared and angled towards that PLCCA, and it's a very  
23 detailed statute.

24 *THE COURT:* I guess another concern that I  
25 have right now is even if I were to allow the



1 depositions, if you're close to five on Deponent B, are  
2 you going to go in there and finish up with the hour, an  
3 hour and ten minutes, and then come back and say, "well,  
4 now we need more time," or is now the time to ask for  
5 it, I mean, for that to be part of the entire motion?  
6 Because then, otherwise, that forces you to being back  
7 in here.

8 *MR. CRAWFORD:* No, Your Honor. I would  
9 agree. I think if the Court is going to -- if you're  
10 going to graciously allow the depositions, I think we do  
11 need to have some sort of a discussion on time. I don't  
12 think we can go around that right now. I don't know.

13 I'll ask my cocounsel what their thoughts  
14 are.

15 *THE COURT:* Well, and, I mean, is this --  
16 how many cases are consolidated right now? Four?

17 *MR. PRICHARD:* Yes, Your Honor.

18 *MR. CRAWFORD:* Four or five, Your Honor.

19 *THE COURT:* Okay.

20 *MR. CRAWFORD:* Four causes -- four cause  
21 numbers, yes.

22 *MR. PRICHARD:* And I think the Court asked  
23 for -- about a motion. There's been no motion.

24 *THE COURT:* Right. I mean, that's why I  
25 asked.

1                   *MR. PRICHARD:* They sent a notice. We  
2 filed a motion to quash, and we have not gotten any kind  
3 of response.

4                   *THE COURT:* What's the second motion y'all  
5 have here today?

6                   *MS. MILITELLO:* It's a motion to enforce  
7 the agreed protective order. When the first lawsuit was  
8 filed, and that's the one that is set to be tried in  
9 October of this year, because of the public nature of  
10 the cases, at the inception before any discovery was  
11 conducted, the parties agreed to enter into a protective  
12 order.

13                   And it had categories of documents that  
14 would be deemed to be confidential, and it's spelled out  
15 in the protective order. One category is for financial  
16 or business information of Academy. Another is sales  
17 and customer information, the corporate and strategic  
18 planning information, as well as the identity of the  
19 witnesses.

20                   The identity of the witnesses, there's no  
21 dispute. But what those other broad categories in  
22 the -- in the documents that were produced, Academy  
23 stamped them "confidential." Now, as the Court knows,  
24 they can be used for purposes of prosecuting these  
25 various lawsuits. They can be used --

1                   *THE COURT:* In an open -- in an open  
2 courtroom.

3                   *MS. MILITELLO:* -- in an open courtroom.

4                   But the -- there has been a dispute, and  
5 we needed to get the Court's ruling today to tell them  
6 that they must still abide by the protective order.  
7 Because what has happened is Mr. Demerath spoke with my  
8 colleague, Mr. Demeropolis, and told him --

9                   *THE COURT:* Do you like all the names  
10 here, Mary?

11                  *MS. MILITELLO:* And then with Militello,  
12 it all makes it so easy, and I apologize.

13                  But he spoke to Mr. Demeropolis and said  
14 that I had -- I was considering de-designating all of  
15 Academy's confidential designations. Nick, knowing me  
16 very well, questioned that because, of course, I had not  
17 made that assertion, and they had a conversation. It is  
18 documented in the motion.

19                  You will see the e-mail that at the  
20 conclusion -- at the conclusion of that conference call,  
21 Mr. Demeropolis sent to Mr. Demerath an e-mail saying,  
22 "Okay. We've had this call. This is my understanding  
23 of what occurred in the call." And with respect to the  
24 issue about the confidential designations on the  
25 documents, Mr. Demeropolis said, "It's my understanding

1 that you are not claiming that we have waived the  
2 designation or that we are going to de-designate those  
3 documents. If that is incorrect, please let me know."

4 And then he said, "And if I'm incorrect  
5 and you are complaining about the designation of some  
6 document or documents stamped 'confidential,' then,  
7 please, under the terms of the protective order, let me  
8 know which documents you've got an issue with, and we  
9 can discuss it and see if we can come to an agreement  
10 about the designation or not." There was complete  
11 silence after that. We got no response.

12 Fast-forward a few days or a week or so,  
13 and we had filed a motion to seal certain records  
14 related to the summary judgment that you've heard about,  
15 for the first time, often because they have names.

16 *THE COURT:* A motion to seal under 76a?

17 *MS. MILITELLO:* Yes, a motion to seal  
18 under 76a. We have done that a number of times in this  
19 case because of the names. The names come up in -- you  
20 know, in the deposition. It's on every page. I mean,  
21 it's -- and in their questioning, they would use the  
22 name freely, you know, all through the questioning. So  
23 we had a motion to seal, as we had done a number of  
24 times.

25 *THE COURT:* Have those been heard?

1                   *MS. MILITELLO:* Yes.

2                   *MR. DEMEROPOLIS:* Yes.

3                   *MS. MILITELLO:* And they have -- they  
4 have -- the first few had been unobjected to, and they  
5 were sealed. The last one --

6                   *THE COURT:* Y'all did the public notice --

7                   *MS. MILITELLO:* Oh, yes.

8                   *THE COURT:* -- and everything under 76a?

9                   *MS. MILITELLO:* Yes, we did the whole --  
10 the whole procedure. This last time with the motion to  
11 seal, we had done the posting. We had gone through the  
12 whole procedure.

13                   And the day before the hearing,  
14 defendant -- defendant, Mr. Demerath, filed an objection  
15 to the motion to seal and claimed that we had waived the  
16 confidential designation because of this communication  
17 between Mr. Demerath and Mr. Demeropolis where he said  
18 we did not -- we, being Academy, did not come to the  
19 Court within ten days of their claiming that we have no  
20 confidential designations. Thus, we have waived this.

21                   Well, that was the first time, the very  
22 first time that we heard that they were claiming waiver;  
23 the very first time that we understood that they thought  
24 that we had de-designated or waived the confidential  
25 designation. They had never responded to the e-mail

1 where we said, "If, in fact, you have a question about  
2 this, then let's discuss. We understand that you are  
3 not claiming that anymore, but let us know."

4 "And if, in fact, you have a problem, the  
5 protective order has a process, like every protective  
6 order does, of what to do." And that process is that  
7 they come, and they tell us we don't think this  
8 document, this document, or this document, or whatever  
9 one, we think the designation is inappropriate. The  
10 parties talk, and they try to then work it out and then  
11 come to the Court.

12 Instead, they've taken this position that  
13 nothing that Academy has produced, the sales  
14 information, their policies and procedures, etc.,  
15 nothing has a confidential designation.

16 *THE COURT:* Have those been sealed?

17 *MS. MILITELLO:* They have -- they have not  
18 been sealed. But now they're taking the position, and  
19 we have -- I have been told -- I, myself, have been told  
20 any number of times that there will be pressure to bear  
21 on Academy -- when these documents are publicized, when  
22 they are made known, then there's going to be pressure  
23 to bear on Academy to settle this case. That is what  
24 this is about.

25 This isn't about using these documents in

1 a deposition or at a hearing or some place. They want  
2 to de-designate documents that have not been used in  
3 court. They are taking -- I think it's 76a(c), but  
4 they're trying to now claim all of these non-filed  
5 documents are public -- are court records. But to be a  
6 court record, it is the burden on the plaintiff, and the  
7 rules say it. It is the burden of the plaintiff to show  
8 a nexus between some particular document and harm to the  
9 public if that document is not available to the public.

10 They haven't even tried. They have filed  
11 nothing that says this is -- they haven't fulfilled  
12 their burden in that regard. They haven't tried to  
13 fulfill their burden. They haven't followed the  
14 procedures under the protective order, and they've  
15 ignored the communications we've asked them to.  
16 Instead, they make the claim that somehow we have waived  
17 the designations.

18 Nobody is trying to stop these plaintiffs  
19 from using these documents to prosecute their case, Your  
20 Honor. That is not why we're here. This case is no  
21 different than any other case when it comes to documents  
22 being marked "confidential."

23 And, yes, those used in court, those used  
24 at a hearing or those used in -- at trial, they're going  
25 to be made public. But we have produced over

1 2400 pages, and they claim that what we should have done  
2 was come to the Court and gone through 2400 pages of  
3 documents with the Court to show the Court why these are  
4 confidential.

5 *THE COURT:* Right now it's your position  
6 that all of those 2400 pages are confidential?

7 *MS. MILITELLO:* They are because we -- and  
8 I wouldn't say that there's no document out there that  
9 was not marked "confidential." But, substantially, all  
10 of them were because the vast majority of these are all  
11 the policies, procedures, training programs, etc., that  
12 Academy has developed over the years. And they just are  
13 not interested in those being disseminated. Used in  
14 this case, you know, perhaps certain portions of them  
15 were -- or will be, but not that they have a right to  
16 take those documents that we have marked "confidential"  
17 and that they agreed in the protective order would be  
18 deemed to be confidential.

19 As I said, the protective order clearly  
20 had categories of -- and corporate and strategic  
21 planning information, sales and customer information,  
22 financial or business information, those were  
23 designations that they agreed we could mark as  
24 "confidential." And now they want this Court, after  
25 getting documents that we would never have agreed to



1 without a protective order, now that they've gotten the  
2 documents, they want to use them.

3 And in the conversations I've had now with  
4 respect to these, they say, "Well, these -- you know,  
5 there are -- there are potential plaintiffs or potential  
6 plaintiffs' attorneys who would like to see certain of  
7 the documents," and that's not how this works.

8 The way it works is a Court entered this  
9 protective order. We abide by the terms of the  
10 protective order. They have to follow the process and  
11 procedures of the protective order, and then we can come  
12 to this Court with a focused hearing. If this Court  
13 would like, I guess we could set up a full day, and I  
14 could bring in the whole box, and we could walk through  
15 exactly how --

16 *THE COURT:* Are you saying that this  
17 protective order includes not being able to share with  
18 other litigants arising out of this incident?

19 *MS. MILITELLO:* It is not until they are  
20 part of -- not until they have signed the protective  
21 order. It was -- it was all four -- all four cases that  
22 have been consolidated, all of those parties have gotten  
23 the documents because they've agreed to the protective  
24 order.

25 If some -- if some third party out there

1 does not agree to the protective order and does not  
2 agree to the confidentiality of those documents, then,  
3 no, they don't get them. Then we have the hearing about  
4 whether that would be appropriate or not.

5 *THE COURT:* Because, as I recall, and  
6 y'all are probably more familiar with these since you've  
7 been dealing with confidentiality and 76 -- Texas Rule  
8 of Civil Procedure 76a, you cannot enter into protective  
9 orders that would violate 76a in regards to limiting  
10 discovery amongst similar litigants. Am I wrong in  
11 that?

12 *MS. MILITELLO:* We have -- I think under  
13 76a, Your Honor, it contemplates that, yes, documents  
14 can be marked as "confidential." And then if -- if a  
15 party thinks that designation is wrong -- or 76a really  
16 deals with sealing, which is like a higher level than  
17 that.

18 *THE COURT:* Exactly, exactly. But you  
19 can't enter into a confidentiality agreement that  
20 basically -- that basically overrides 76a by saying none  
21 of this we're going to -- basically, all of it is  
22 effectively sealed.

23 *MS. MILITELLO:* We are not saying --  
24 because, for example, at the last hearing, the Judge  
25 said the names will be sealed, but not the policies and

1 procedures or any of the documents that they attached to  
2 the motion for summary judgment hearing. That's fine,  
3 because that's the same way.

4           It's no different than any case. You have  
5 a motion. You have exhibits attached, certain of the  
6 documents, and then those become court records. But as  
7 this Court knows, in every case and in this case, it's  
8 no different. Thousands of pages have been produced.  
9 They are sitting in lawyers' offices somewhere, but  
10 those don't get to be just disseminated to the public.  
11 And 76a specifically says that the only way that they  
12 can, is when they are deemed to be court records,  
13 something as if it were attached.

14           And then it is the document in question,  
15 there has to be a nexus between the Court -- the law is  
16 very clear. There has to be a nexus between some  
17 document and an actual adverse impact on public health  
18 or safety. That's what Rule 76a says. And that burden  
19 falls on the party who wants to make these documents a  
20 court record.

21           And they have done -- they have not -- not  
22 only not followed the procedures in the protective  
23 order, but they clearly haven't said, "Here are  
24 documents that we think we could show a nexus between  
25 this particular document and an actual adverse impact on

1 public safety and health." And there is no nexus, Your  
2 Honor.

3 So what they're trying to do is an end run  
4 and strip Academy of its confidential designation and  
5 use these documents in a way not intended to further  
6 their -- further their case in this court. They can do  
7 that already. There's only one thing that they can't do  
8 with that confidential designation, and that is, to  
9 publish them and use them somewhere outside of this  
10 courthouse and outside of the realm of these four cases  
11 that have been consolidated.

12 *THE COURT:* Plaintiffs?

13 *MR. DEMERATH:* Your Honor, Justin Demerath  
14 for Mr. Braden. Thank you very much for the opportunity  
15 to argue the other side of this motion. I'm going to be  
16 discussing the black binder. It's the smaller one that  
17 seems to be made of paper rather than plastic that has  
18 some important documents in it.

19 And I respectfully must disagree with  
20 Mrs. Militello's discussion of the facts, and I think  
21 that the documents that I would like to show you, as we  
22 go through this, will support the position that I'm  
23 trying to take.

24 Just like Judge Pozza refused to seal the  
25 courtroom during the motion for summary judgment and

1 just like Judge Jimenez refused to seal the summary  
2 judgment documents under 76a, we do not believe that the  
3 documents that have been marked as "confidential" in  
4 this case are appropriately confidential under Texas  
5 law. And I would like to start with the chronology of  
6 what led up to where we are today, so that you can  
7 understand the framework that we must be dealing with  
8 today.

9               So there were some initial lawsuits that  
10 were filed in this case against Academy last year, a  
11 little bit less than a year after the event, and  
12 Mr. Braden intervened in one of those lawsuits. And I,  
13 as Mr. Braden's counsel, was not privy to any of the  
14 discovery documents that had already been produced, and  
15 there had already been a confidentiality order that was  
16 signed.

17               And so prior to being able to get the  
18 discovery documents from the defendants, they insisted  
19 that I sign, on behalf of my client, the same  
20 confidentiality agreement that had been signed in the  
21 case, which I looked at and saw in paragraph No. 6. And  
22 I think it's really important to look at this paragraph  
23 No. 6 in any of either our notebook or the defendant's  
24 notebook.

25               *THE COURT:* Entitled "Responsibility for

1 Unauthorized Use or Disclosure"?

2 *MR. DEMERATH:* Let me make sure I've got  
3 it in front of me too, Your Honor. "Responsibility for  
4 Unauthorized Use or Disclosure," correct. In the third  
5 paragraph of that confidentiality agreement, it outlines  
6 the procedure that we are to follow if we think that  
7 there is something that is not subject to  
8 confidentiality, and I'll give you just a minute to read  
9 it.

10 *THE COURT:* Okay.

11 *MR. DEMERATH:* Understanding that there  
12 was a methodology if we disagreed that some document was  
13 confidential, in good faith, I agreed to sign the  
14 confidentiality agreement because I thought that this  
15 document would be used as a scalpel rather than a  
16 baseball bat.

17 And when I received the discovery from  
18 defendants, including about -- it's up to about  
19 2800 pages of documents, and I also received the  
20 deposition testimony, every single page of every  
21 document under the sun that has been produced was marked  
22 as "confidential." And I had a concern with that  
23 because it was not an appropriate use of this -- of this  
24 confidentiality order.

25 And so rather than address the issue then,

1 we waited until after the summary judgment. And when  
2 the summary judgment was denied, it was then time to  
3 move forward with the litigation, and I knew there were  
4 many reasons that this needed to be not confidential,  
5 including communicating with other counsel. And I  
6 requested that I might be able to communicate with other  
7 counsel about some of these documents and that request  
8 was denied.

9 And so I sent an e-mail, which is an  
10 exhibit to the document, to Mr. Demeropolis, and I  
11 inadvertently forgot to put Ms. Militello on the e-mail,  
12 and I have apologized for that profusely to her. But I  
13 sent the e-mail to Mr. Demeropolis quoting paragraph 6,  
14 stating that "Under paragraph 6, you've designated  
15 everything under the sun as 'confidential,' and that's  
16 not appropriate. This is not anything that has to do  
17 with financial information of the company, but rather  
18 information that has to do with things that regard  
19 public safety."

20 The procedure of transferring a gun from a  
21 federally firearms licensed -- a federal firearms dealer  
22 to an individual implements public safety. And so I  
23 asked Mr. Demeropolis, I said, "This is -- none of this  
24 is appropriately confidential. Pursuant to paragraph 6,  
25 I'm placing you on notice that every document that's

1 been marked as 'confidential' should not be  
2 appropriately confidential," and the e-mail is attached  
3 in there.

4 we then subsequently had another  
5 conversation, and Ms. Militello is correct.  
6 Mr. Demeropolis sent me back an e-mail, and I  
7 highlighted the second paragraph where he states, "we  
8 will proceed with the filing of the agreed protective  
9 order in both new cases, as the parties have agreed."  
10 So --

11 *THE COURT:* And that's in an e-mail?

12 *MR. DEMERATH:* That's in an e-mail. That  
13 is -- I believe it's attached to the Exhibit E of the  
14 defendant's motion.

15 *THE COURT:* Okay.

16 *MR. DEMERATH:* And it was my understanding  
17 that at that point because they had said, "No, we refuse  
18 to lift the confidentiality designation on any document  
19 under the sun that we have produced," that they would be  
20 moving forward and producing -- or filing a motion for  
21 protective order. And so the time frame came for that  
22 protective order to be filed. And instead of filing a  
23 protective order, there was simply a motion to seal the  
24 summary judgment documents under 76a that was filed. No  
25 protective order was filed.



1                   So the ten days came, and the ten days  
2 went. After we identified which documents we believed  
3 were not confidential and put them on notice that they  
4 needed to either file a protective order or the  
5 confidentiality designation should be lifted pursuant to  
6 the terms of the confidentiality order that we signed,  
7 we went to the hearing on the motion to seal the court  
8 records, and we had a 76a analysis that took place. And  
9 Judge Jimenez ruled that the documents were not  
10 appropriately to be sealed under 76a, and so those  
11 documents moved forward.

12                   So because we are in a position where  
13 we're following this agreed order, it is our first  
14 position, Your Honor, first of two, that the defendants  
15 have not put any information before the Court in this  
16 motion at this hearing or in any argument today that  
17 justifies the treatment of the documents as confidential  
18 under the appropriate Texas law, and that's what the  
19 standard is, Your Honor.

20                   If Academy would like to keep these  
21 documents confidential pursuant to the confidentiality  
22 order, we -- after putting them on notice, it is their  
23 burden to show that under appropriate Texas law, that  
24 these documents are confidential. There hasn't been any  
25 argument that those documents are confidential because

1 there can't be any argument that they are confidential.  
2 There isn't any Texas law that says that this could  
3 appropriately be confidential.

4 Now, usually you look at 76a regarding  
5 trade secrets or other matters, and there hasn't been  
6 any showing by Academy of that very important point.  
7 So, Your Honor, we believe that the timing of the  
8 arguments and the lack of evidence before the Court is  
9 going to put the Court in a position where they have to  
10 de-designate these documents as confidential.

11 Secondly, Your Honor, and I'll make this  
12 second argument brief. Doing an analysis under --

13 *THE COURT:* When do you think -- was it  
14 your e-mail, your e-mail exchange that that -- within  
15 that e-mail you gave them notice; and so, therefore,  
16 they should have, within ten days from that date, filed  
17 a motion for protective order?

18 *MR. DEMERATH:* Correct. Yes, Your Honor.

19 *THE COURT:* Okay.

20 *MR. DEMERATH:* But taking the timing issue  
21 aside, because I think it's more important to analyze  
22 the law rather than a timing issue, which I think is the  
23 most appropriate analysis here, when we look at the law  
24 governing confidential documents, Texas courts are  
25 presumed to be open, and documents in discovery are

1 presumed to be open as well. And I need to be able to  
2 appropriately litigate this case to take documents that  
3 are not appropriately confidential and use them in ways  
4 that I'm prevented from doing under this confidentiality  
5 order.

6 For example, there's a series of  
7 documents, such as insurance policies and declaration  
8 pages, that are marked as "confidential." And I need to  
9 communicate with third parties about that information in  
10 order to effectively do my job for my clients in an  
11 attempt to move this case towards resolution. I've  
12 specifically requested to be able to do that but have  
13 been denied that.

14 There are a series of other documents like  
15 publicly available firearms license documents. There's  
16 a host of other documents that have been produced that  
17 are in no way appropriately confidential. But  
18 regardless of those facts, the appropriate law here  
19 has to -- you have to have evidence before you, if you  
20 are to say that these documents are confidential and  
21 should be treated confidential, and there's been no  
22 showing of any kind of evidence by Academy that these  
23 documents are appropriately confidential.

24 And even if we say, "well, the timing of  
25 the protective order doesn't matter. We're here today

1 to talk about the protective order," we still have to  
2 have some law that is cited by Academy that shows that  
3 these documents deserve confidential treatment.

4 Now, I want to, finally, Your Honor,  
5 address one issue about what is or is not court records  
6 for the purpose of 76a. Unfiled discovery pursuant to  
7 the terms of 76a is a court record if it implicates  
8 public safety, and I believe that that is 76a,  
9 subparagraph (c), discovery not filed --

10 *THE COURT:* Hold on, hold on. Let me get  
11 there.

12 *MR. DEMERATH:* Sure. Sure, Your Honor.

13 *THE COURT:* Subparagraph (c)?

14 *MR. DEMERATH:* Yes, Your Honor.

15 *THE COURT:* Okay.

16 *MR. DEMERATH:* "Discovery, not filed of  
17 record, concerning matters that have a probable adverse  
18 effect upon the general public health or safety,"  
19 fast-forwarding, "except things that are trade secrets  
20 are," for the purposes of 76a under paragraph 2, "a  
21 court record."

22 *THE COURT:* Okay.

23 *MR. DEMERATH:* So, Your Honor, as we  
24 discussed earlier today, the discovery in this case has  
25 been limited very, very narrowly, and we deposed on very

1 narrow issues and complied with that order very narrowly  
2 to understand how Academy transfers assault rifles to  
3 individuals.

4 And as I hope Your Honor can appreciate,  
5 and we've cited evidence in our papers, there are very  
6 real things that are very adverse on the effect of  
7 public health and safety that happen when firearms are  
8 not transferred in a legal or appropriate manner. And  
9 that is the fundamental allegation in this case, is that  
10 Academy violated the law when they transferred a firearm  
11 to an individual that by virtue of the law was  
12 prohibited from possessing the particular firearm that  
13 they transferred to him due to his state of residency.

14 Every document that's been produced, every  
15 page of deposition testimony, touches or concerns the  
16 illegal transfer of an assault rifle to an individual  
17 that legally, because of his state of residence, should  
18 not have been able to possess the particular assault  
19 rifle that he possessed.

20 And, Your Honor, I was walking in the  
21 courthouse just this morning. And as I passed the metal  
22 detector on the left, there's a sign that says, "Active  
23 shooter training to be conducted by the DA's office."  
24 And we live in a point in our society where the transfer  
25 of firearms absolutely implicates the public health and

1 safety. And every document that has been produced to  
2 date in this case, including all of the policies and  
3 procedures, all of the ways that Academy transfers  
4 firearms, is a matter of public safety.

5 And one more very important point, Your  
6 Honor, and then unless you have any questions, I'll  
7 conclude my remarks. The policy that was in effect,  
8 that allowed an individual who came from a state that  
9 bans high-capacity firearms, is still being conducted by  
10 Academy today. If we were to walk into -- if you were  
11 from one of the states that bans a high-capacity firearm  
12 and if you walk into an Academy location today and  
13 attempt to purchase a firearm, it is my understanding --  
14 and I don't have full discovery on this yet, Your Honor,  
15 but it is my understanding that that practice, that  
16 illegal practice is still occurring to this day. And  
17 all of the documents that touch or concern this, touch  
18 or concern that practice.

19 And so, Your Honor, it is my motion to the  
20 Court that there is an order that is entered that any  
21 documents that relate to the transfer of firearms are  
22 deemed to be a court record because they implicate  
23 public safety. And, Your Honor, I would request that  
24 because of the timing of the motion for protective order  
25 and because of the fact that these documents implicate

1 public safety, and because the documents don't fall  
2 within the scope of the definitions within the  
3 confidentiality order, that the designation of these  
4 documents as "confidential" be lifted.

5 *THE COURT:* In its entirety?

6 *MR. DEMERATH:* In its entirety for  
7 documents that relate to the transfer of firearms, yes.

8 But I -- to be technical, the notice that  
9 I provided to defendants was that I reviewed all of the  
10 records that have been marked as "confidential," and I  
11 was unable to find anything that I thought was  
12 appropriately confidential.

13 *THE COURT:* Not a single page?

14 *MR. DEMERATH:* I did not believe that a  
15 single page fell within the limits of confidentiality  
16 under the standards that we have discussed today, Your  
17 Honor. That being said, Your Honor, one last point.

18 The identity of Academy employees is  
19 something that we agree with opposing counsel and have  
20 aggressively attempted to protect, and that is the first  
21 thing that we have compromised on and that will never be  
22 an issue. The identity of Academy employees in this  
23 situation should absolutely remain confidential, and we  
24 want to make sure that's a part of any order.

25 There may be -- I can't think of any

1 documents that have a confidentiality designation or a  
2 scalpel use of that agreement. I don't know that they  
3 exist, Your Honor, but I am more than happy to discuss  
4 it with opposing counsel. But to date, we have had no  
5 results in that -- those discussions.

6 *MS. MILITELLO:* Just very few, Your Honor.  
7 Looking at paragraph 6 of the protective order, in the  
8 third paragraph that Mr. Demerath focused the Court on,  
9 the last sentence on that on page 15, it says: "In the  
10 case of documents, the objecting party shall identify  
11 the document by the document identification number of  
12 each document, if the producing party so numbered the  
13 documents."

14 we did number the documents. That's why  
15 we said, "Hey, give us the list." It isn't just, "Oh,  
16 we don't think anything is, so now we can throw the  
17 burden to you to show it."

18 But more importantly, when -- in this  
19 e-mail communication that you were focused to and in the  
20 e-mail that Mr. Demeropolis sent back to Mr. Demerath,  
21 he had the Court look at the second paragraph. But the  
22 first paragraph is where Nick said, "Hey, it's my  
23 understanding -- thanks for the conversation. And after  
24 talking, it's my understanding that you're retracting  
25 plaintiffs' objection to Academy's confidential --



1 confidentiality designations. To the extent that I am  
2 mistaken, we request that plaintiffs provide a list of  
3 all documents that plaintiffs are contending are not  
4 confidential under the terms of the agreed protective  
5 order, as required by paragraph 6," the same paragraph I  
6 just focused this Court to.

7               So we said, "Hey, the understanding was  
8 you're not making this argument." Mr. Demeropolis put  
9 that in writing and said, "That's my understanding."

10              And they were silent. They didn't come  
11 back and say, "No. You're wrong. We are contending  
12 that, every single page."

13              And as this Court noted with surprise in  
14 her voice, that -- I mean, every single page. And the  
15 example that was given, and we have had numerous  
16 discussions about the insurance, there's a difference  
17 between the confidentiality. They've got the insurance  
18 policies. They can do what they want to in this case.  
19 Every plaintiff in these four cases has been given  
20 access to not only the declaration page, but the entire  
21 policies when they want them.

22              What Mr. Demerath has asked me is, he  
23 wants to go and find other plaintiffs and other  
24 plaintiffs' lawyers, and they would like to see the  
25 amount of Academy's insurance, and they want to look at

1 the policies, and they want to figure out how to frame  
2 claims related to those policies. That's not the law.  
3 The law doesn't say they can take my documents, and they  
4 can go out and try this case in the public.

5           Interestingly, he says, "This is an  
6 illegal sale, and the public has to understand that this  
7 is an illegal sale." Well, Judge, we need to have this  
8 case tried because interestingly, and not surprisingly,  
9 when this incident happened, and it was a horrific  
10 incident, the ATF came in. The Texas Rangers came. The  
11 FBI came. Local authorities came. They all looked at  
12 this, and not one of those entities have ever questioned  
13 how Academy sells its firearms, and you know they would  
14 have, had it been improper.

15           And, also, following this incident,  
16 Academy has opened up new stores, and they have been  
17 granted licenses to new stores. So their claim that  
18 this is horrible and Academy is breaking the rules and  
19 they need to go warn the public, that's what this case  
20 is about. They can use every one of these documents so  
21 that we can take this and get a final resolution, a  
22 trial of this matter, but not out in the public, not to  
23 drum up other business. That is an improper use.

24           And these documents should remain  
25 confidential until they come forward, give me a list,

1 and we can come back to this Court and talk about  
2 specific documents.

3 COURT'S RULING

4 *THE COURT:* All right. So as far as Issue  
5 No. 2 on the confidentiality, unfortunately, both sides  
6 have taken extreme positions. The defense thinks  
7 they're all confidential, and the plaintiffs think that  
8 none of them are confidential. So I'm going to put the  
9 work back on y'all, as opposed to the Court doing an in  
10 camera inspection on 2500 to 2800 documents, and y'all  
11 will need to work and confer and whittle down which ones  
12 you really think are confidential and which ones are not  
13 confidential.

14 The confidentiality agreement will stay in  
15 place until then, but I'm going to give you a drop-dead  
16 deadline by when you have to come back so that this  
17 doesn't go on for weeks and months going back and forth.

18 You guys are going to really have to put  
19 some work horses on it and get together and really say,  
20 "You know, okay. That's fine. That's not confidential.  
21 we'll let it go. And, oh, my gosh, this is really --  
22 you know, is or is not confidential."

23 How much time do y'all need to go to  
24 somebody's conference room and go through the pages?  
25 And, you know, I'm -- you know, I mean, that's the only

1 way we can do it.

2 *MS. MILITELLO:* Two weeks, Your Honor.

3 *MR. DEMERATH:* Your Honor, the Court's --

4 *MS. MILITELLO:* Mr. Demerath has got a  
5 vacation letter next week, so I know --

6 *THE COURT:* And I do too, so --

7 *MR. DEMERATH:* Yeah. Spring break is this  
8 week and -- or this coming week, and then Austin's  
9 spring break is the following week. So I would say  
10 maybe at the end of the third week, if that would be  
11 appropriate, Your Honor.

12 *MR. PRICHARD:* That's fine.

13 *MS. MILITELLO:* That's fine with us.

14 *THE COURT:* So by the 29th of March. So,  
15 you know, y'all are going to have to do work on your own  
16 ends.

17 *MS. MILITELLO:* Absolutely.

18 *THE COURT:* And then meet together and  
19 say, "How can we meet?" And then whatever you still  
20 have a dispute about, then you bring back -- you bring  
21 back -- you bring those back to the courthouse.

22 *MR. PRICHARD:* Can we bring them back to  
23 you, since you're already this way into it?

24 *THE COURT:* Yeah. I guess that's a  
25 follow-up on my ruling, so sure.

1                   *MR. PRICHARD:* Thank you.

2                   *MR. DEMERATH:* Your Honor, may I seek  
3 guidance from you on one issue, and it may help the  
4 parties confer on that point? What is the standard that  
5 we should judge the confidentiality by?

6                   *MS. MILITELLO:* I would think that's part  
7 of our discussion.

8                   *THE COURT:* Yeah. I mean, that's --  
9 that's: what is confidential? I mean, that's going to  
10 be the question to both of you and then to the Court. I  
11 mean, that's why I'm trying to get y'all to reach an  
12 agreement on what you can. I mean, I think there's a  
13 lot of things that are not confidential, but there may  
14 be some portions with Academy that they are going to  
15 truly believe is confidential and a breach of their, you  
16 know --

17                   *MR. DEMERATH:* That's the question: The  
18 breach of what? I mean, the confidentiality order says,  
19 "Under applicable Texas law." If the standard that we  
20 are to judge these documents by is applicable standard  
21 Texas law --

22                   *THE COURT:* Of course.

23                   *MR. DEMERATH:* -- then that gives us a lot  
24 of guidance as to what --

25                   *THE COURT:* Well, of course it is. What

1 else would it be?

2 *MR. DEMERATH:* Okay.

3 *THE COURT:* Yeah, absolutely, Texas law.  
4 Bring your case law with you when you come back to show  
5 why something is or is not confidential.

6 *MR. DEMERATH:* Thank you for that  
7 clarification, Your Honor.

8 *THE COURT:* And so do y'all need until  
9 that date and then come back the following week to have  
10 the hearing? In other words, come back the first week  
11 of April to --

12 *MR. CRAWFORD:* I would think so, assuming  
13 we can't work it all out.

14 *THE COURT:* Right.

15 *MR. PRICHARD:* Can we call Cindie and get  
16 a date?

17 *THE COURT:* No. I want to give you a date  
18 now.

19 *MR. PRICHARD:* Give us a -- okay.

20 *THE COURT:* And that way, we save that  
21 date and say, "This is the date that whatever y'all  
22 don't -- in other words, do your work and get it done by  
23 March 29th. The following week on any -- on any  
24 disputes you still have, you'll come back." And we're  
25 going to hold either a half a day or however long we

1 need to hold.

2 *MR. PRICHARD:* Friday is better. Is  
3 Friday okay for you?

4 *THE COURT:* It's fine with me.

5 *MR. PRICHARD:* In case you're in court in  
6 trial, I know we had that issue.

7 *THE COURT:* Oh, that's right. Let me  
8 look.

9 *MR. DEMERATH:* Your Honor, I've got two  
10 dates that I'm unavailable, and one of them is that  
11 week, and the other one is on that Friday, the 5th.

12 *THE COURT:* All right. Let me look. The  
13 week of April 8th is best for the Court.

14 *MR. PRICHARD:* Okay.

15 *THE COURT:* That gives y'all a little bit  
16 more time. So do y'all have a date on the week of  
17 April 8th?

18 *MR. CRAWFORD:* I'll make it work, Judge.

19 *MR. DEMERATH:* It's up to the Court.

20 *MR. PRICHARD:* Can we confer about the  
21 week of April 8th and let the Court know?

22 *THE COURT:* Sure.

23 *MR. PRICHARD:* Is that okay?

24 *THE COURT:* And the sooner the better  
25 because that way she can block that date, okay?

1                   *MR. PRICHARD:* I'll try to do it quickly.

2                   *THE COURT:* The only day -- the only day  
3 that I'm not available is that Monday. Other than that,  
4 I'm available all week long.

5                   *MR. PRICHARD:* That's the 8th?

6                   *THE COURT:* Yes.

7                   *MR. PRICHARD:* So --

8                   *THE COURT:* The 9th, 10th, 11th, and 12th.

9                   *MR. CRAWFORD:* And the plaintiffs will  
10 make any of those dates work.

11                   *MR. DEMERATH:* I promote the 10th. If you  
12 guys want to check on that, we can talk about the 10th  
13 maybe.

14                   *MR. PRICHARD:* I am not going to come over  
15 here on April the 10th. That's my birthday.

16                   *THE COURT:* We would have a cake for you  
17 and margaritas or something.

18                   *MR. PRICHARD:* Yeah. What kind of cake  
19 would they give me, you know? Rat cake?

20                   *THE REPORTER:* Do you want me to go off,  
21 Judge? Judge, do you want me to go off the record?

22                   *MR. PRICHARD:* I'm sorry.

23                   *THE COURT:* Well, what if Deputy Dave  
24 starts singing right now?

25                   we can go off the record.



1                   *(Discussion off the record.)*

2                   *THE COURT:* We're back on. Case reset to  
3 4/12/19. How long? I know it's hard to tell because we  
4 don't know if we're going to have 10 documents or  
5 1500 documents.

6                   *MS. MILITELLO:* I don't know.

7                   *MR. CRAWFORD:* Two to three hours?

8                   *THE COURT:* I mean, do y'all want -- I can  
9 give y'all all afternoon. Do y'all think you need more  
10 than all afternoon?

11                   *MR. CRAWFORD:* No.

12                   *MS. MILITELLO:* No, I wouldn't think so.

13                   *THE COURT:* Okay. And then -- and then  
14 the Court can also take it under advisement and see --  
15 you know, apply the law and see, give you a ruling the  
16 very next week. I know it's important to get your  
17 ruling.

18                   So case reset to 4/12/19 at 1:30 p.m.  
19 Like I said, the confidentiality agreement will stay in  
20 place until the Court rules.

21                   *MR. PRICHARD:* Thank you for giving us  
22 that time, Your Honor.

23                   *THE COURT:* Sure.

24                   *MS. MILITELLO:* Thank you.

25                   *THE COURT:* You know, on the depositions,

1 I'm inclined to give -- to allow the depositions because  
2 I think as a trial attorney, if you're going in with the  
3 ruling of Judge -- of any Judge saying it's going to be  
4 narrowed in scope, that even though it might have gone  
5 outside of those bounds to some extent, that that was  
6 still the focus of the depositions. But, you know, you  
7 can't come back again because -- you know, in May and  
8 say, "Well, now we need more time."

9 So I think the timing is important. I  
10 think other -- the consolidation of the cases is  
11 important. I mean, so --

12 *MR. CRAWFORD:* Sure.

13 *THE COURT:* -- it's difficult for me to  
14 say go ahead and take something in March at this point.

15 I think we've got to get a better docket  
16 control situation and see which cases are going to be,  
17 you know, consolidated and whatnot. I mean, just like a  
18 judge -- a case that Judge Alvarado has on an apartment  
19 complex elderly, you know, where they -- you know,  
20 whether the parties liked it or not, it was consolidated  
21 to some extent.

22 *MR. CRAWFORD:* So, Judge, just to clarify,  
23 we can essentially complete the time on the depositions, if we  
24 need to. Obviously, we need to confer with other  
25 counsel who are coming in. I understand that that's

1 separate.

2 *THE COURT:* I'm allowing -- and then,  
3 again, right now before the Court, you don't have a  
4 request to increase the time on the one gentleman or  
5 person that's already been deposed for almost five  
6 hours. My guess is you're going to need more than that.

7 So maybe if I'm just telling you that I'm  
8 going to allow more, I'm going to allow the depositions.  
9 Obviously, you're not going to rehash -- and I know  
10 you're not going to do that -- rehash what's already  
11 been -- you know, no second shot. This is going to be  
12 your depositions for good. I think it's a smart idea to  
13 get together with both plaintiffs' counsel and then the  
14 defense and say, "what's going to be a good time?" so  
15 that we know we've got -- it sounds like there's a lot  
16 of discovery disputes out there.

17 *MR. CRAWFORD:* Yes.

18 *THE COURT:* You know, don't go in and take  
19 the deposition, and then two months later come and say,  
20 "well, we finally get a motion to compel on one, and now  
21 we want to depose them on this" because you've already  
22 shot out the cannon and deposed them.

23 *MR. PRICHARD:* And that's -- and that's  
24 what is going to happen. So I'm trying to understand,  
25 Your Honor, are you suggesting that we wait until these

1 other parties are joined in their case and have a  
2 discussion about that for one more time only? Because  
3 what we're talking about is giving them another bite,  
4 this group a bite. And then if there are others, I  
5 mean, we could be doing this over and over and over  
6 again.

7 *MR. CRAWFORD:* But that's --

8 *MR. PRICHARD:* So we need some case  
9 management assistance here.

10 *THE COURT:* Except that all the cases are  
11 not in the same management system.

12 *MR. PRICHARD:* They're not.

13 *THE COURT:* And they may not want to.

14 *MR. CRAWFORD:* Judge, my understanding is  
15 you're allowing for the depositions, but you need us to  
16 be considerate of time issues and the fact that other  
17 plaintiffs are involved. So we anticipate on going to  
18 the other plaintiffs trying to coordinate that,  
19 obviously trying to work out any discovery issues we  
20 have before we set this -- these depositions and move forward.

21 *THE COURT:* And then come back to the  
22 Court for more guidance, I guess.

23 *MR. CRAWFORD:* Okay.

24 *MR. PRICHARD:* I'm still not quite sure I  
25 understand.

1                   *THE COURT:* Well, my problem, though, I  
2 understand where you're going, and I think -- I think we  
3 think alike. There should be a lot of case management.  
4 The problem is that's not within my realm right now.

5                   *MR. PRICHARD:* Right now it's not. I  
6 agree.

7                   *THE COURT:* Unless y'all make some kind of  
8 motion and go to, I guess, monitoring and say, "How are  
9 we going to handle this, you know"?

10                  *MR. CRAWFORD:* Yeah. I think my overly  
11 concern is the expert designation is mid April.

12                  *THE COURT:* Well, see, and that's a  
13 concern -- that's a concern of mine also.

14                  *MR. CRAWFORD:* Yeah.

15                  *THE COURT:* I mean, if y'all push them and  
16 say, "No. Your drop-dead deadline is whatever. It is  
17 April 15th," then I'm going to say, "Take your  
18 deposition the first week of April then."

19                  *MS. MILITELLO:* Your Honor, they are the  
20 ones who put together those dates. You know, as  
21 everybody knows, that is a very tight deadline. The  
22 Court recognized it. But I don't think they can say,  
23 "We want this tight deadline, and, therefore, we get to  
24 keep taking depositions and exceed the six hours that  
25 the -- that the rules allow."

1                   There was nothing in the previous order  
2           that said --

3                   *THE COURT:* And like I said, if there's  
4           not a motion --

5                   *MS. MILITELLO:* -- that said, "You're  
6           going to get to take this, and then get to take another  
7           six-hour deposition."

8                   *THE COURT:* That's why I'm bringing it up  
9           now because I don't want them going and saying, "Okay.  
10          Now we took up the last of the hour and ten minutes  
11          that's left, and now we need more time."

12                   It's something you need to address the  
13          issue first before you go in there and take the  
14          deposition.

15                   *MR. PRICHARD:* Sure.

16                   *THE COURT:* Don't go in there and take a  
17          deposition for an hour, and say, "Oh, now we need more  
18          time. We need to come back to the Court," any court.

19                   *MR. CRAWFORD:* I understand. You're  
20          allowing the depositions, but you need us to be very,  
21          very deliberate and considerate of time.

22                   *THE COURT:* Talk to them about how much  
23          time you really need. Talk about timing because of  
24          discovery. Talk to them about the experts' depositions.  
25          Talk about the trial date.

1 I mean, in reality, I understand you want  
2 to shoot out and let's get to trial in October. But, I  
3 mean, just hearing it first off, and this is the first  
4 I've heard of this case, like I said early on, October  
5 seems awful wishful, guys.

6 MR. PRICHARD: We couldn't agree more.

7 THE COURT: I mean, I know y'all want to  
8 get to trial, but, you know, you're sort of binding  
9 yourselves and binding the other side, so --

10 MR. CRAWFORD: We'll work logistically on  
11 how this is going to work out.

12 THE COURT: So that's where I'm going.  
13 Talk about it. When we come back, we can talk about the  
14 depositions.

15 when is your -- when is your expert  
16 deadline?

17 MR. CRAWFORD: I believe April 15th.

18 THE COURT: See, I mean --

19 MR. CRAWFORD: I know.

20 MR. PRICHARD: That's the whole issue. I  
21 mean, can we come back on the 12th and see where we are  
22 about case management and how much time they think they  
23 have? You're not suggesting that we have to present  
24 these two gentlemen again between now and the 12th, are  
25 you?

1           *THE COURT:* Well, here is my problem. Not  
2 necessarily except they've got an expert's deadline on  
3 the 15th. So right now, my only option is, well, I'm  
4 going to allow it. So, yeah, go take it next week or in  
5 two weeks. I don't think that makes sense. I don't  
6 think that sounds efficient. I don't think that's  
7 smart. By the same token, you're trial lawyers, you  
8 know. You guys got to do what you've got to do.

9           *MR. CRAWFORD:* Okay.

10          *THE COURT:* So why don't y'all talk about  
11 it.

12          *MR. CRAWFORD:* We'll talk about it, Your  
13 Honor.

14          *THE COURT:* And let me know.

15          *MR. PRICHARD:* If they decide to go  
16 forward between now and the 12th, with all due respect,  
17 shouldn't they be limited to a total of six hours?

18          *THE COURT:* There's no motion that says  
19 otherwise.

20          *MR. PRICHARD:* Thank you. Okay.

21          *THE COURT:* Right now, guys, you don't  
22 have a motion that says, "We want more time."

23          *MR. CRAWFORD:* Your Honor, I understand.

24          *THE COURT:* Because you've got to sort of  
25 put it together and say, "Really, how much more time do



1 we need? Three hours? Two hours? Six hours?"

2 *MR. CRAWFORD:* We may not even need it. I  
3 don't know.

4 *THE COURT:* You may not need more than an  
5 hour.

6 *MR. CRAWFORD:* Or we may. So we'll have  
7 to talk about that, and then --

8 *MR. DEMERATH:* The one thing that comes to  
9 mind too -- we've got a layer into this -- that we had a  
10 series of written discovery. The written discovery was  
11 very narrow previously, and we sent new written  
12 discovery, and that was produced, but we didn't get a  
13 single page of documents.

14 *THE COURT:* And that's what I'm saying,  
15 gentlemen, is --

16 *MR. DEMERATH:* Yeah.

17 *THE COURT:* -- there's going to be motions  
18 to compel.

19 And normally, especially if you're  
20 preparing for trial, you want to get all of those  
21 motions to compel addressed and ordered by a Court and  
22 see what they have to produce before you have to take  
23 these very expensive and important depositions. You  
24 need to have all of your ammunition -- all your --  
25 everything ready to go, you know, at that time.

1                   MR. CRAWFORD: Okay.

2                   THE COURT: So let's go off the record  
3 because now we're just talking amongst you trial  
4 lawyers, you know.

5                   *(Discussion off the record.)*

6                   THE COURT: Back on the record. The  
7 ruling of the Court: The two depositions or  
8 re-depositions to be allowed, not to be taken before  
9 April 12th. Plaintiffs' deadlines for designation of  
10 expert to be extended. The parties to work on dates.  
11 And then the case is reset to 4/12/19 at 1:30 here in  
12 this court to address confidentiality documents.

13                  MR. DEMERATH: Under the applicable  
14 standard of Texas law?

15                  THE COURT: Of course. Do you want to go  
16 under like some other law? California?

17                  MR. PRICHARD: You know, the United  
18 Nations.

19                  MR. DEMERATH: No, no. But there's many  
20 different standards we could work on. It could be a  
21 couple of different things.

22                  THE COURT: Yeah.

23                  MR. DEMERATH: So that's very important to  
24 have the rules set.

25                  THE COURT: In accordance to Texas law.

1                   *MR. DEMERATH:* Okay.

2                   *MR. PRICHARD:* But back on the  
3 depositions, Your Honor, you said that they could be  
4 taken, but not -- but it would be after 4/12. But under  
5 the current time frames, absent a motion to extend the  
6 deadlines --

7                   *THE COURT:* They'll have to --

8                   *MR. PRICHARD:* -- of the time.

9                   *THE COURT:* Obviously if they want to  
10 extend the time, y'all will need to file a motion.

11                   *MR. CRAWFORD:* We'll need to file a  
12 motion, Your Honor.

13                   *THE COURT:* You know, and then I think you  
14 just need to figure out how much time you think you will  
15 need. And who knows? They might agree, you know. It  
16 sounds like y'all are trying to work together.

17                   All right. Anything further for today?

18                   *MR. CRAWFORD:* Nothing, Your Honor.

19                   *THE COURT:* I think I'll go ahead and keep  
20 your binders because it looks like we'll need to be  
21 addressing the confidentiality agreement and whatnot in  
22 a few weeks, all right?

23                   Thank y'all.

24                   *MR. PRICHARD:* Thank you, Your Honor.

25                   *THE COURT:* Y'all have a good weekend.

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*MR. CRAWFORD:* Thank you, Your Honor.

*MR. PRICHARD:* Have a good vacation.

*THE COURT:* Oh, I will.

*(10:17 a.m. Court was adjourned.)*

\*-\*-\*-\*-\*-\*-\*-\*-\*-\*

(END OF PROCEEDINGS)

1 THE STATE OF TEXAS )

2 COUNTY OF BEXAR )

3 I, MARY ORALIA BERRY, Official Court  
4 Reporter in and for the 131st District Court of Bexar  
5 County, State of Texas, do hereby certify that the above  
6 and foregoing contains a true and correct transcription  
7 of all portions of evidence and other proceedings  
8 requested in writing by counsel for the parties to be  
9 included in this volume of the Reporter's Record, in the  
10 above-styled and numbered cause, all of which occurred  
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's  
13 Record of the proceedings truly and correctly reflects  
14 the exhibits, if any, offered and/or admitted by the  
15 respective parties.

16 I further certify that the total *expedited*  
17 original costs for preparation of this Reporter's Record  
18 is \$612.00 and was paid by Mr. David M. Prichard.

19 WITNESS MY OFFICIAL HAND this the 12th day  
20 of March, 2019.

21 /s/ Mary Oralia Berry  
22 Mary Oralia Berry, Texas CSR #2963  
23 Expiration Date: 12/31/19  
24 Official Court Reporter-Bexar County, TX  
25 100 Doloresa  
131st District Court, Room 2.17  
Bexar County Courthouse  
San Antonio, Texas 78205  
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